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Subject:	Draft Directive of the European Parliament and of the Council laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences and repealing Council Decision 2000/642/JHA – Mandate for negotiations with the European Parliament

At its meeting on 21 November 2018, the Permanent Representatives Committee agreed on the mandate for negotiations with the European Parliament, as set out in the Annex.

Changes to the Commission proposal are marked in ***bold/italics*** for additions and in ~~strikethrough~~ for deletions.

2018/0105 (COD)

Proposal for a *Draft*

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences and repealing Council Decision 2000/642/JHA

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 87(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C , , p. .

² OJ C , , p. .

- (1) Facilitating the use of financial information is necessary to prevent, detect, investigate or prosecute serious crimes.
- (2) In order to enhance security in the Member States and across the Union, it is necessary to improve access to information by Financial Intelligence Units and public authorities responsible for the prevention, detection, investigation or prosecution of serious forms of crimes, to enhance their ability to conduct financial investigations and to improve cooperation between them.
- (3) In its Action Plan to strengthen the fight against terrorist financing³, the Commission committed to explore the possibility of a dedicated legal instrument to broaden the access to centralised bank account registries by Member States' authorities, namely authorities competent for the prevention, detection, investigation or prosecution of criminal offences, Asset Recovery Offices, tax authorities, anti-corruption authorities. Moreover, the 2016 Action Plan also called for a mapping of obstacles to the access to, exchange and use of information and to the operational cooperation between Financial Intelligence Units.
- (4) Directive (EU) 2015/849⁴ requires Member States to establish centralised bank account registries or data retrieval systems allowing the timely identification of the persons holding bank and payment accounts and safe deposit boxes.
- (5) Pursuant to Directive (EU) 2015/849, the information held in those registries is directly accessible to Financial Intelligence Units and is also accessible to national authorities competent for the prevention of money laundering, its predicate offences and terrorist financing.

³ COM (2016) 50 of 2.2.2016.

⁴ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, OJ L 141 of 5.6.2015, p. 73.

- (6) Immediate and direct access to the information held in centralised bank account registries is often indispensable for the success of a criminal investigation or for the timely identification, tracing and freezing of the related assets in view of their confiscation. Direct access is the most immediate type of access to the information held in centralised bank account registries. This Directive should therefore lay down rules granting direct access to information held in centralised bank account registries to designated Member States' authorities and other bodies competent for the prevention, detection, investigation or prosecution of criminal offences. ***This Directive should not affect channels to exchange information between competent authorities or their powers to obtain information from obliged entities under Union or national law of Member States. Any access to information held in centralized registries by other national authorities for other purposes or with respect to other crimes than those covered by this Directive falls outside the scope of this Directive.***
- (7) Given that in each Member States there are numerous authorities or bodies which are competent for the prevention, detection, investigation or prosecution of criminal offences, and in order to ensure a proportionate access to financial and other information under the present Directive, Member States should be required to designate which authorities should be empowered to have access to the centralised bank account registries and request information from Financial Intelligence Units for the purposes of this Directive.
- (8) Asset Recovery Offices should be designated among the competent authorities and have direct access to the information held in centralised bank account registries when preventing, detecting or investigating a specific serious criminal offence or supporting a specific criminal investigation, including the identification, tracing and freezing of assets.

- (9) To the extent that tax authorities and anti-corruption agencies are competent for the prevention, detection, investigation or prosecution of criminal offences under national law, they should also be considered authorities that can be designated for the purposes of this Directive. Administrative investigations, ***other than those conducted by the Financial Intelligence Units in the context of preventing, detecting and effectively combatting money laundering and terrorist financing***, should not be covered under the present Directive.
- (10) The perpetrators of criminal offences, in particular criminal groups and terrorists, often operate across different Member States and their assets, including bank accounts, are often located in other Member States. Given the cross-border dimension of serious crimes, including terrorism, and of the related financial activities, it is often necessary for competent authorities carrying out investigations to access information on bank accounts held in other Member States.
- (11) The information acquired by competent authorities from the national centralised bank account registries can be exchanged with competent authorities located in a different Member State, in accordance with Council Framework Decision 2006/960/JHA⁵ and Directive 2014/41/EU⁶ of the European Parliament and the Council.

⁵ Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, OJ L 386 of 29.12.2006, p. 89.

⁶ Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters, OJ L 130 of 1.5.2014, p. 1.

- (12) Directive (EU) 2015/849 has substantially enhanced the Union legal framework that governs the activity and cooperation of Financial Intelligence Units, ***the legal status of which varies across the Member States from administrative or law enforcement to hybrid ones***. The powers of Financial Intelligence Units include the right to access the financial, administrative and law enforcement information that they require to combat money laundering, the associated predicate offences and terrorist financing. Nevertheless, Union law does not lay down all specific tools and mechanisms that Financial Intelligence Units must have at their disposal in order to access such information and accomplish their tasks. Since Member States remain entirely responsible for the setting up and deciding the organisational nature of Financial Intelligence Units, different Financial Intelligence Units have varying degrees of access to regulatory databases which leads to an insufficient exchange of information between law enforcement or prosecution services and Financial Intelligence Units.
- (13) In order to enhance legal certainty and operational effectiveness, this Directive should lay down rules to strengthen the Financial Intelligence Units' ability to share information with their designated competent authorities for all serious criminal offences. ***For that reason, Financial Intelligence Units should be entitled to reply to requests for information by competent authorities in certain situations. That entitlement does not preclude the autonomy of the Financial Intelligence Units under the Directive (EU) 2015/849 to disseminate information on their own initiative. In particular, in cases where the information originates from a Financial Intelligence Unit of another Member State, any restrictions and conditions imposed by that Financial Intelligence Unit for the use of that information need to be complied with and any use for purposes beyond those originally approved is made subject to the prior consent of that Financial Intelligence Unit.***
- (14) This Directive should also set out a clearly defined legal framework to enable Financial Intelligence Units to request relevant data stored by designated competent authorities in order to enable them to prevent and combat money laundering, the associated predicate offences and terrorist financing effectively.

- (15) Sharing information between Financial Intelligence Units and ~~with~~ competent authorities should only be permitted where it is necessary on a case-by-case basis *in accordance with the principle of proportionality* either for the prevention, detection, investigation or prosecution of serious criminal offences or for money laundering, the associated predicate offences and terrorist financing.
- (16) ~~In order to prevent and combat money laundering, the associated predicate offences and terrorist financing more effectively and to reinforce its role in providing financial information and analysis, a Financial Intelligence Unit should be empowered to exchange information or analysis already in its possession or which can be obtained from obliged entities at the request of another Financial Intelligence Unit or of a competent authority in its Member State. This~~ *The exchange of information* should not hamper a Financial Intelligence Unit's active role in disseminating its analysis to other Financial Intelligence Units where that analysis reveals facts, conduct or suspicion of money laundering and terrorist financing of direct interest to those other Financial Intelligence Units. Financial analysis covers operational analysis which focuses on individual cases and specific targets or on appropriate selected information, depending on the type and volume of the disclosures received and the expected use of the information after dissemination as well as strategic analysis addressing money laundering and terrorist financing trends and patterns. However, this Directive should be without prejudice to the organisational status and role conferred to Financial Intelligence Units under the national law of Member States.
- ~~(17) Time limits for exchanges of information between Financial Intelligence Units are necessary to ensure quick, effective and consistent cooperation. Sharing information necessary to solve cross-border cases and investigations should be carried out with the same celerity and priority as for a similar domestic case. Time limits should be provided to ensure effective sharing of information within reasonable time or to meet procedural constraints. Shorter time limits should be provided in duly justified cases, where the requests relate to specific serious criminal offences, such as terrorist offences and offences related to a terrorist group or activities as laid down in Union law.~~

- (18) ~~The use of secure facilities for the exchange of information, in particular the decentralised computer network FIU.net (the ‘FIU.net’), which is managed by Europol since 1 January 2016, or its successor and the techniques offered by FIU.net, should be used for exchanges of information between Financial Intelligence Units.~~
- (19) Given the sensitivity of financial data that should be analysed by Financial Intelligence Units and the necessary data protection safeguards, this Directive should specifically set out the type and scope of information that can be exchanged between Financial Intelligence Units and ~~with~~ designated competent authorities. This Directive should not bring any changes to currently agreed methods of data collection.
- (20) Under its specific competences and tasks as laid down in Article 4 of Regulation (EU) 2016/794 of the European Parliament and of the Council⁷, Europol provides support to Member States’ cross-border investigations into the money laundering activities of transnational criminal organisations. ***In that context, Europol is obliged to notify the Member States of any information and connections between criminal offences concerning them.*** According to Regulation (EU) 2016/794, the Europol National Units are the liaison bodies between Europol and the Member States' authorities competent to investigate criminal offences. To provide Europol with the information necessary to carry out its tasks, Member States should ~~provide that~~ ***entitle*** their Financial Intelligence Unit ~~replies to reply~~ to requests for financial information and financial analysis made by Europol through the respective Europol National Unit ***or by direct contacts where appropriate.*** Member States should also ~~provide that~~ ***entitle*** their Europol National Unit ~~replies and where appropriate also their competent authorities to reply~~ to requests for information on bank accounts by Europol. Requests made by Europol have to be duly justified. They have to be made on a case-by case basis, within the limits of Europol's responsibilities and for the performance of its tasks.

⁷ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, OJ L 135, 24.5.2016, p. 53.

- (21) This Directive should also be mindful of the fact that, *where applicable*, in accordance with Article 43 of Regulation (EU) 2017/1939⁸, the European Delegated Prosecutors of the European Public Prosecution Office (EPPO) are empowered to obtain any relevant information stored in national criminal investigation and law enforcement databases, as well as other relevant registries of public authorities, including centralised bank account registries and data retrieval systems under the same conditions as those that apply under national law in similar cases.
- (22) To achieve the appropriate balance between efficiency and a high level of data protection, Member States should be required to ensure that the processing of sensitive financial information that could reveal a person's race or ethnic origin, political opinions, religion or philosophical beliefs, trade union membership, health, sexual life or sexual orientation should be allowed only to the extent that it is strictly necessary and relevant to a specific investigation.
- (23) This Directive respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and by the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family life (Article 7) and the right to the protection of personal data (Article 8), by international law and international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in Member States' constitutions in their respective fields of application.

⁸ Council Regulation (EU) 2017/1939 of 12 October 2017, implementing enhanced cooperation on the establishment of the European Public Prosecution Office ("the EPPO"), OJ L 283 of 31.10.2017, p. 1.

- (24) It is essential to ensure that processing of personal data under this Directive fully respects the right to protection of personal data. Any such processing is subject to Directive (EU) 2016/680 of the European Parliament and of the Council and to Regulation (EU) 2016/679 of the European Parliament and of the Council⁹, in their respective scope of application. As far as the access of Asset Recovery Offices to centralised bank account registries and data retrieval systems is concerned, Directive (EU) 2016/680 applies while Article 5(2) of Council Decision 2007/845/JHA should not apply. As far as Europol is concerned, Regulation (EU) 2016/794 applies. Specific and additional safeguards and conditions for ensuring the protection of personal data should be laid down in this Directive in respect of mechanisms to ensure the processing of sensitive data and records of information requests.
- (25) Personal data obtained under this Directive should only be processed by competent authorities where it is necessary and proportionate for the purposes of prevention, detection, investigation or prosecution of serious crime.
- (26) Furthermore, in order to respect the right to the protection of personal data and the right to privacy and limit the impact of the access to the information contained in centralised bank account registries and data retrieval systems, it is essential to provide for conditions limiting the access. In particular, Member States should ensure that appropriate data protection policies and measures apply to the access to personal data from competent authorities for the purposes of this Directive. Only authorised persons should have access to information containing personal data which can be obtained from the centralised bank account registries or through authentication processes.
- ~~(27) The transfer of financial data to third countries and international partners, for the purposes laid down in this Directive should only be allowed under the conditions laid down in Chapter V of Directive (EU) 2016/680 or Chapter V of Regulation (EU) 2016/679.~~

⁹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

- (28) The Commission should report on the implementation of this Directive three years after its date of transposition, and every three years thereafter. In accordance with paragraphs 22 and 23 of the Interinstitutional Agreement on Better Law-Making¹⁰ the Commission should also carry out an evaluation of this Directive on the basis of information collected through specific monitoring arrangements in order to assess the actual effects of the Directive and the need for any further action.
- (29) This Directive aims at ensuring that rules are adopted to provide Union citizens with a higher level of security by preventing and combating crime, pursuant to Article 67 of the Treaty on the Functioning of the European Union. Due to their transnational nature, the terrorist and criminal threats affect the Union as a whole and require a Union wide response. Criminals may exploit, and will benefit from, the lack of an efficient use of bank account information and financial information in a Member State, which can have consequences in another Member State. Since the objective of this Directive cannot be sufficiently achieved by the Member States, but can rather be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.
- (30) Council Decision 2000/642/JHA should be repealed since its subject matter is regulated by other Union acts and is not needed anymore.
- (31) {In accordance with Article 3 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Directive.}

¹⁰ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016; OJ L 123, 12.5.2016, p. 1–14.

- (32) ~~[In accordance with Articles 1 and 2 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom and Ireland are not taking part in the adoption and application of this Directive and are not bound by it or subject to its application.]~~
- (33) In accordance with Articles 1 and 2 of Protocol (No 22) on the position of Denmark annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (34) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001¹¹ of the European Parliament and of the Council [and delivered an opinion on ...¹²],

HAVE ADOPTED THIS DIRECTIVE:

¹¹ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies on the free movement of such data, OJ L 8, 12.1.2001, p. 1.

¹² OJ C ...

Chapter I

GENERAL PROVISIONS

Article 1

Subject matter

1. This Directive lays down measures to facilitate access ***to and use of financial information and bank account information***, by competent authorities, for the prevention, detection, investigation or prosecution of serious criminal offences. It also provides for measures to facilitate access by Financial Intelligence Units to law enforcement information ***for the prevention and combating of money laundering, associate predicate offences and terrorist financing*** ~~and to facilitate the cooperation between Financial Intelligence Units.~~
2. This Directive is without prejudice to:
 - (a) the provisions of Directive (EU) 2015/849 of the European Parliament and of the Council and the related provisions in the national law of Member States, including the organisational status conferred to Financial Intelligence Units under national law;
 - (b) ~~the powers of competent authorities~~ ***channels*** to exchange information between ~~them~~ ***competent authorities*** or ***their powers*** to obtain information from obliged entities under Union law or the national law of Member States-;
 - (c) ***the provisions of Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol)***;
 - (d) ***the obligations resulting from European Union instruments on mutual legal assistance or on mutual recognition of decisions regarding criminal matters and from Framework Decision 2006/960/JHA.***

Article 2

Definitions

For the purposes of this Directive, the following definitions apply:

- (a) 'centralised bank account registries' means the centralised automated mechanisms, such as central registries or central electronic data retrieval systems, set up in accordance with Article 32a(1) of Directive (EU) 2015/849;
- (b) 'Asset Recovery Offices' means the national offices designated by the Member States pursuant to Article 8(1) of Council Decision 2007/845/JHA for the purposes of the facilitation of the tracing and identification of proceeds of crime and other crime related property in view of its possible freezing, seizure or confiscation based on an order issued by a competent judicial authority;
- (c) 'Financial Intelligence Unit' means the body established in each Member State for the purposes of Article 32 of Directive (EU) 2015/849;
- (d) 'obliged entities' means the entities set out in Article 2 of Directive (EU) 2015/849;
- (e) 'financial information' means any type of information or data which is **already** held by Financial Intelligence Units to prevent, detect and effectively combat money laundering and terrorist financing, ~~or any type of information or data which is held by public authorities or by obliged entities for those purposes and which is available to Financial Intelligence Units without the taking of coercive measures under national law;~~.

- (f) 'law enforcement information' means:
- (1) any type of information or data which is **already** held by competent authorities **in the context of preventing, detecting, investigating or prosecuting** criminal offences, or
 - (2) any type of information or data which is held by public authorities or by private entities ~~for those purposes~~ **in that context** and which is available to competent authorities without the taking of coercive measures under national law;
- (g) 'bank account information' means the following information **on bank and payment accounts** contained in the centralised bank account registries:
- (a) for the customer-account holder and any person purporting to act on behalf of the customer: the name, complemented by either the other identification data required under the national provisions transposing Article 13(1)(a) of Directive (EU) 2015/849 on identifying the customer and verifying the customer's identity, or a unique identification number;
 - (b) for the beneficial owner of the customer-account holder: the name, complemented by either the other identification data required under the national provisions transposing Article 13(1)(b) of Directive (EU) 2015/849 on identifying the beneficial owner and verifying the beneficial owner's identity, or a unique identification number;
 - (c) for the bank or payment account: the IBAN number and the date of account opening and closing;
 - (d) for the safe deposit box: name of the lessee complemented by the other identification data required under the national provisions transposing Article 13 (1) of Directive (EU) 2015/849 on the identification of the customer and the beneficial owner and verification of his/her identity, or a unique identification number and the duration of the lease period.
- (h) 'money laundering' means the conduct defined in Article 3 of Directive (EU) 2018/XX¹³;

¹³ Directive 2018/XX/EU on countering money laundering by criminal law, OJ

- (i) 'associated predicate offences' means the offences set out in Article 2 of Directive (EU) 2018/XX;
- (j) 'terrorist financing' means the conduct defined in Article 11 of Directive (EU) 2017/541¹⁴;
- (k) 'financial analysis' means the **results of** operational and strategic analysis **that has already been** carried out by the Financial Intelligence Units for the performance of their tasks pursuant to Directive (EU) 2015/849;
- (l) 'serious criminal offences' means the forms of crime listed in Annex I to Regulation (EU) 2016/794 of the European Parliament and of the Council.

Article 3

Designation of competent authorities

1. Each Member State shall designate among its authorities competent for the prevention, detection, investigation or prosecution of criminal offences the competent authorities empowered to access and search **its** national centralised bank account registries **registry** set up ~~by the Member States~~ in accordance with Article 32a of Directive (EU) 2015/849. They shall **at least** include ~~the Europol National Units and~~ the Asset Recovery Offices.
2. Each Member State shall designate among its authorities competent for the prevention, detection, investigation or prosecution of criminal offences the competent authorities ~~empowered~~ **entitled** to request and receive financial information or financial analysis from the Financial Intelligence Unit. ~~They shall include the Europol National Units.~~
3. Each Member State shall notify the Commission its designated competent authorities in accordance with paragraphs (1) and (2) by [6 months from transposition date] at the latest, and shall notify the Commission of any amendment thereto. The Commission shall publish the notifications and any amendment thereto in the Official Journal of the European Union.

¹⁴ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, OJ L 88 of 31.3.2017, p. 6.

Chapter II

ACCESS BY COMPETENT AUTHORITIES TO BANK ACCOUNT INFORMATION

Article 4

Access and search by competent authorities to bank account information

1. Member States shall ensure that the competent ***national*** authorities designated pursuant to Article 3(1) shall have the power to access and search, directly and immediately, bank account information when necessary for the performance of their tasks for the purposes of preventing, detecting, investigating or prosecuting a serious criminal offence or supporting a criminal investigation concerning a serious criminal offence, including the identification, tracing and freezing of the assets related to such investigation. ***Access and search is also deemed direct and immediate where the national authorities operating the central bank account registries transmit the bank account information expeditiously by an automated mechanism to competent authorities, provided that no intermediary institution may interfere with the requested data or the information to be provided.***
2. The additional information that Member States may deem essential and include in the centralised bank account registries in accordance with Article 32a(4) of Directive 2018/XX/EU shall not be accessible and searchable by competent authorities ~~according to~~ ***on the basis of*** this Directive.

Article 5

Conditions for the access and search by competent authorities

1. The access and search of bank account information in accordance with Article 4 shall be performed only by the persons within each competent authority that have been specifically designated and authorised to perform these tasks and on a case-by-case basis.

2. Member States shall ensure that the access and search by competent authorities is supported by technical and organisational measures ensuring the security of the data.

Article 6

Monitoring the access and search by competent authorities

1. Member States shall ensure that ~~the authorities operating the centralised bank account registries keep a log~~ **logs are kept** of any access by competent authorities to bank account information. The logs shall include, in particular, the following elements:
 - (a) the national file reference;
 - (b) the date and time of the query or search;
 - (c) the type of data used to launch the query or search;
 - (d) the results of the query or search;
 - (e) the name of the authority consulting the registry;
 - (f) ~~the identifiers~~ **unique user identifier** of the official who carried out the query or search ~~and of the official who ordered~~ **and, as far as possible, the unique user identifier of the recipient of the results of** the query or search.
2. The logs shall be ~~regularly checked by~~ **made available, on request, to** the data protection officers of the centralised bank account registries and ~~by~~ **to** the competent supervisory authority established in accordance with Article 41 of Directive (EU) 2016/680.
3. The logs referred to in paragraph 1 shall be used only for data protection monitoring, including checking the admissibility of a request and the lawfulness of data processing, and for ensuring data security. They shall be protected by appropriate measures against unauthorised access and shall be erased five years after their creation, unless they are required for monitoring procedures that are already ongoing.

Chapter III

EXCHANGE OF DATA BETWEEN COMPETENT AUTHORITIES AND FINANCIAL INTELLIGENCE UNITS, ~~AND BETWEEN FINANCIAL INTELLIGENCE UNITS~~

Article 7

Requests for information by competent authorities to the Financial Intelligence Unit

1. Subject to national procedural safeguards, each Member State shall ensure that its national Financial Intelligence Unit is ~~required~~ **entitled** to reply, ***in a timely manner***, to requests for financial information or financial analysis by its designated competent authorities referred to in Article 3(2), where that financial information or financial analysis is necessary, on a case-by-case basis, for the prevention, detection, investigation or prosecution of serious criminal offences. ***Exemptions provided for under Article 32(5) of Directive (EU) 2015/849 shall apply.***
2. The financial information and financial analysis received from the Financial Intelligence Unit may be processed by the competent authorities of the Member States for the specific purposes of preventing, detecting, investigating or prosecuting serious criminal offences other than the purposes for which personal data are collected in accordance with Article 4(2) of Directive (EU) 2016/680.

Article 8

Requests of information by a Financial Intelligence Unit to competent authorities

Subject to national procedural safeguards **and in addition to the access to information by the the Financial Intelligence Units, as provided for in Article 32(4) Directive (EU) 2015/849**, each Member State shall ensure that its designated national competent authorities are required to reply, **in a timely manner**, to requests for law enforcement information by the national Financial Intelligence Unit, on a case-by-case basis, where the information is necessary for the prevention and combating of money laundering, associate predicate offences and terrorist financing.

Article 9

Exchange of information between Financial Intelligence Units of different Member States

- ~~1. Each Member State shall ensure that its Financial Intelligence Unit is enabled to exchange financial information or financial analysis with any Financial Intelligence Unit in the Union where that financial information or financial analysis is necessary for the prevention and combating of money laundering, associate predicate offences and terrorist financing.~~
- ~~2. Member States shall ensure that where a Financial Intelligence Unit is requested pursuant to paragraph 1 to exchange financial information or financial analysis, it shall do so as soon as possible and in any case no later than three days after the receipt of the request. In exceptional, duly justified cases, this time limit may be extended by a maximum of 10 days.~~

- ~~3. Member States shall ensure that, in exceptional and urgent cases, and by way of derogation from paragraph 2, where a Financial Intelligence Unit is requested pursuant to paragraph 1 to exchange financial information or financial analysis already in its possession that relates to specific investigations concerning an act or conduct qualified as a serious criminal offence, a Financial Intelligence Unit shall provide that information or analysis no later than 24 hours after the receipt of the request.~~
- ~~4. Member States shall ensure that a request issued pursuant to this Article and its response shall be transmitted by using the dedicated secure electronic communications network FIU.net or its successor. That network shall ensure the secure communication and shall be capable of producing a written record under conditions that allow ascertaining authenticity. In the event of technical failure of the FIU.net, the financial information or financial analysis shall be transmitted by any other appropriate means ensuring a high level of data security.~~

Chapter IV

EUROPOL

Article 10

Access by Europol to bank account information and exchange of information between Europol and Financial Intelligence Units

1. Each Member State shall ensure that its ~~Europol National Unit~~ **competent authorities are entitled to reply, through the Europol National Unit or by direct contacts with Europol if allowed by that Member State**, to duly justified requests related to bank account information made by the Agency for Law Enforcement Cooperation established by Regulation (EU) 2016/794 of the European Parliament and of the Council ('Europol') on a case-by-case basis within the limits of its responsibilities and for the performance of its tasks. **Article 7(7) of Regulation (EU) 2016/794 shall apply.**
2. Each Member State shall ensure that its Financial Intelligence Unit ~~replies~~ **is entitled to reply** to duly justified requests related to financial information and financial analysis made by Europol through the Europol National Unit, **or by direct contacts between the Financial Intelligence Unit and Europol if allowed by that Member State**, within the limits of its responsibilities and for the performance of its tasks. **Exemptions provided for under Article 32(5) of Directive (EU) 2015/849 shall apply. Article 7(7) of Regulation (EU) 2016/794 shall also apply.**
3. Exchange of information **between the competent authorities, Financial Intelligence Units or Europol National Units and Europol** under paragraphs 1 and 2, **respectively**, shall take place electronically through SIENA and in accordance with Regulation (EU) 2016/794 **or via the FIU.Net or its successor where applicable**. ~~The language used for the request and the exchange of information shall be that applicable to SIENA.~~

Article 11

Data protection requirements

1. The processing of personal data related to bank account information, financial information and financial analysis referred to in Article 10(1) and (2) shall be performed only by the persons within Europol who have been specifically designated and authorised to perform those tasks.
2. Europol shall inform the data protection officer appointed in accordance with Article 41 of Regulation (EU) 2016/794 of each exchange of information pursuant to Article 10 of this Directive.

Chapter V

ADDITIONAL PROVISIONS RELATED TO THE PROCESSING OF PERSONAL DATA

Article 12

Scope

This Chapter shall only apply to designated competent authorities and Financial Intelligence Units in the exchange of information pursuant to Chapter III and in respect of exchanges of financial information and financial analysis involving the Europol National Units pursuant to Chapter IV.

Article 13

Processing of sensitive data

1. The processing of information revealing a person's race or ethnic origin, political opinions, religion or philosophical beliefs, trade union membership, health, sexual life or sexual orientation may only be allowed to the extent that it is strictly necessary and relevant in a specific case, ***subject to appropriate safeguards for the rights and freedoms of the data subject.***
2. Only persons specifically authorised ***by the controller*** may access and process the data referred to in paragraph 1 ~~under the instruction of the data protection officer.~~

Article 14

Records of information requests

Member States shall ensure that ~~the requesting and~~ the responding authorities maintain records relating to requests for information pursuant to this Directive. Those records shall contain at least the following information:

- (a) the name and contact details of the organisation and personnel member requesting the information;
- (b) the reference to the national case in relation to which the information is requested;
- (c) the ***subject matter of the*** requests ~~made pursuant to this Directive~~; and their
- (d) ***any*** executing measures ***of such requests***.

The records shall be kept for a period of five years, and shall be used solely for the purpose of verification of the lawfulness of the processing of personal data. The authorities concerned shall make all records available, upon request, to the national supervisory authority.

Article 15

Restrictions to data subjects rights

Member States ~~shall~~ ***may*** adopt legislative measures restricting, in whole or in part, the data subject's right of access to personal data relating to him or her processed under this Directive ***to the extent that, and for as long as, such a restriction constitutes a necessary and proportionate measure in a democratic society with due regard for fundamental rights and the legitimate interests of the natural person concerned*** in order to:

- (a) ~~enable the Financial Intelligence Unit or the competent national authority to fulfil its tasks properly for the purposes of this Directive;~~

- (b) avoid obstructing official or legal inquiries, analyses, investigations or procedures for the purposes of this Directive ~~and to ensure that~~
- (c) *avoid prejudicing* the prevention, investigation and detection of money laundering, terrorist financing or other serious criminal offences ~~is not jeopardised~~.

Chapter VI

FINAL PROVISIONS

Article 16

Monitoring

1. Member States shall review the effectiveness of their systems to combat serious criminal offences by maintaining comprehensive statistics.
2. By [6 months after the entry into force] at the latest, the Commission shall establish a detailed programme for monitoring the outputs, results and impacts of this Directive.

The monitoring programme shall set out the means by which and the intervals at which the data and other necessary evidence will be collected. It shall specify the action to be taken by the Commission and by the Member States in collecting and analysing the data and other evidence.

Member States shall provide the Commission with the data and other evidence necessary for the monitoring.

3. In any event, the statistics referred to in paragraph 1 shall include the following information:
 - (a) the number of searches carried out by designated competent authorities in accordance with Article 4;

- (b) data measuring the volume of requests issued by each authority covered by this Directive, the follow-up given to those requests, the number of cases investigated, the number of persons prosecuted, the number of persons convicted for serious criminal offences, where such information is available;
 - (c) data measuring the time it takes an authority to respond to a request after the receipt of the request;
 - (d) if available, data measuring the cost of human or IT resources that are dedicated to domestic and cross border requests falling under this Directive.
4. Member States shall organise the production and gathering of the statistics and shall transmit the statistics referred to in paragraph 3 to the Commission on an annual basis.

Article 17

Relationship to other instruments

1. ***This Directive shall not preclude*** Member States ~~may continue to apply~~ ***from maintaining or concluding*** bilateral or multilateral agreements or arrangements between themselves on the exchange of information between competent authorities ***or on mutual legal assistance that are in force on the date of entry into force of this Directive***, in so far as such agreements or arrangements are compatible with ***Union Law, in particular*** this Directive.
2. This Directive is without prejudice to any obligations and commitments of Member States or of the Union by virtue of ***existing*** bilateral or multilateral agreements with third countries.

3. *Without prejudice to the division of competence between the Union and the Member States, in accordance with Union law, Member States shall notify the Commission of their intention to enter into negotiations on, and to conclude, agreements between Member States and third countries.*

If, within two months of the receipt of the notification of a Member State's intention to enter into the negotiations referred to in the first subparagraph, the Commission concludes that the negotiations are likely to undermine the objectives of Union negotiations underway with the third countries concerned or to lead to an agreement which is incompatible with Union law, it shall inform the Member State accordingly.

Member States shall keep the Commission regularly informed of any such negotiations and, where appropriate, invite the Commission to participate as an observer.

Member States shall be authorised to provisionally apply or to conclude agreements with third countries, provided that they are compatible with Union law and do not harm the object and purpose of the relevant policies of the Union. The Commission shall adopt such authorisation decisions by implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 18a.

Article 18

Evaluation

1. By [OJ please insert date: three years after the date of transposition of this Directive] at the latest, and every three years thereafter, the Commission shall draw up a report on the implementation of this Directive and submit it to the European Parliament and to the Council. The report shall be made public.

2. No sooner than six years after the date of transposition of this Directive, the Commission shall carry out an evaluation of this Directive and present a report on the main findings to the European Parliament and the Council. The evaluation shall be conducted according to the Commission's better regulation Guidelines. The report shall also include an evaluation of how fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union have been respected.
3. For the purposes of paragraphs 1 and 2, Member States shall provide the Commission with necessary information for the preparation of the reports. The Commission shall take into account the statistics submitted by Member States under Article 16 and may request additional information from Member States and supervisory authorities.

Article 18a

Committee procedure

1. **The Commission shall be assisted by a committee. This committee shall be a committee within the meaning of Regulation (EU) No 182/2011.**
2. **Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.**

Article 19

Transposition

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by XXYY [~~26-24~~ months after the date of entry into force of *this* Directive (EU) (...)/2018: OJ please insert number of Directive amending Directive (EU) 2015/849] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 20

Repeal of Decision 2000/642/JHA

Decision 2000/642/JHA is repealed with effect from [*the date of transposition of this Directive*].

Article 21

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 22

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg,

For the European Parliament
The President

For the Council
The President
